

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:17-CT-3093-BR

DAVID L. SMITH,)	
Plaintiff,)	
)	
v.)	ORDER
)	
U.S. JUDGE JAMES C. DEVER III, et al.,)	
Defendants.)	

Plaintiff David L. Smith (“Smith”), a state inmate, filed a complaint *pro se* and without paying the filing fee or seeking leave to proceed *in forma pauperis*. Smith claims the defendants, who are three federal judges and a state prison warden, have engaged in a conspiracy by actions taken in connection with three of his prior cases in this district. For the reasons that follow, Smith’s complaint must be dismissed under the “three strikes” provision of the Prison Litigation Reform Act (“PLRA”).

The PLRA requires the court to dismiss a prisoner’s action “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g); see also Tolbert v. Stevenson, 635 F.3d 646, 650 (4th Cir. 2011). Smith has previously filed at least three cases which have been dismissed as frivolous. See Smith v. Boyle, No. 5:16-CT-3297-FL (E.D.N.C. Nov. 21, 2016) (collecting cases and dismissing pursuant to § 1915(g)). Therefore, Smith must show that he is under imminent danger of serious physical injury in order to proceed without prepayment of the filing fee. See 28 U.S.C. § 1915(g). The allegations in the complaint do not suggest that he is

under any such danger. Accordingly, the complaint is DISMISSED WITHOUT PREJUDICE, and the Clerk is DIRECTED to close this case.

This 25 April 2017.

A handwritten signature in green ink, reading "W. Earl Britt", positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge